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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,033

03/19/2004

J. Neil Gleason

033964-1120

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06/27/2006

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EXAMINER

BROWN, MICHAEL A

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/805,033

Applicant(s)

GLEASON ET AL.

Examiner

Michael Brown

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date: ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5-24-05, 4-27-06</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bastia in view of Moriwaki, along with Praria.

Bastia discloses in figures 1-2A a massage device comprising a housing 12, a massage head 16, integral with the housing, a first massaging surface (the massaging surface of head 16), integral with the massage head, a massage head cover 20, formed to engage the massage head, the massage cover includes a second massage surface (the surface of 20), and a freezable material (a gel), the head cover is microwaveable (made of plastic), a handle 14, the head cover includes a rigid surface (page 2, lines 30-32) and an insert (the gel material) that is freezable, a percussive massage element 8, the massage head cover includes nodules 15, located on a surface of the massage cover (the nodules are located on the surface of the massage cover because the cover is located over the nodules which are attached to the head). However, Bastia doesn't disclose a heating element in the massage head, or the gel being freezable. Moriwaki teaches in figure 3 a massage device comprising a massage head 10 having a heating element 50 therein. Praria teaches in figure 4 a pad that provides a covering for a

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vibrator, the pad includes a gel that is freezable. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the heating element as taught by Maoriwaki could be incorporated into the massage device disclosed by Bastia in order to use the heating element to provide heat to the user's muscles. The gel disclosed by Bastia could be freezable as taught by Praira in order to be able to apply coldness to the user's muscles to prevent swelling. It would have been obvious to one having ordinary skill in the art that the gel inside of a pad as taught by Praira could be used to heat or cool the gel to ambient temperatures and the covering could be applied to sore muscles. The head covering disclosed by Bastia is removable and made of gel. The gel taught by Praira is capable of being heated or cooled to an ambient temperature.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Luetngen.

Luetngen teaches in figures 1-10 a massage device comprising a massage head 135 having a motor 500 and an off-center weight 1100 in the head. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the off-center weight 1100 as taught by Luetngen could be substituted for the percussive massage element disclosed by Bastia because either device could be used to produce vibration in the massage head.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Iwamoto.

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Iwamoto teaches in figure 2 a massage device having a massage head 20 and a counter weight 60 therein. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the counter weight as taught by Iwamoto could be incorporated into the massage head disclosed by Bastia in order to use the counter weight to provide dynamic balancing of the massage head to coincide the center of the mass of the entire massage head.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. No additional prior art was cited in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown  
June 19, 2006

A handwritten signature in black ink, appearing to read "Michael A. Brown", with a stylized, flowing script.

**MICHAEL A. BROWN  
PRIMARY EXAMINER**